IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 338 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BM PATEL & BROS

Versus

COMMISSIONER MUNICIPAL CORPORATION OF CITY

Appearance:

1. Special Civil Application No. 338 of 2001
MR MG NAGARKAR for Petitioner
MR PRANAV G DESAI for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 09/10/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE R.K.ABICHANDANI)

1. The petitioner, who was registered as "AA" category contractor with the respondent - corporation, challenges the communication at Annexure "D" to the petition, issued on 1st July 2000 by which the petitioner was blacklisted under resolution No.6. The communication about this decision was sent to the petitioner on 7th July 2000, as per Annexure "E" to the petition.

2. According to the petitioner, it was blacklisted without being given any opportunity of being heard in the matter. It has been averred in paragraph 8 of the petition that the decision of the Corporation to blacklist the petitioner was taken without affording any opportunity of being heard to the petitioner and was violative of principles of natural justice. In grounds (A) and (B) of paragraph 9 of the petition, it was reiterated that the action of blacklisting the petitioner was taken without following the principles of natural justice and no opportunity was given to the petitioner before issuing the order.

3. As against the above assertion, the respondent corporation in its affidavit-in-reply has contended in paragraph 5.4 that a show cause notice dated 25/27th April 2000 was issued to the petitioner on behalf of the respondent corporation indicating therein that, if the deficiency was not set right and the work was not satisfactorily completed by the petitioner, the petitioner will be blacklisted. A copy of that show cause notice is annexed at Annexure "III" to the affidavit-in-reply.

4. A bare reading of the said communication shows that the petitioner was called upon to resume the work of the contract immediately. It was also asked not to send the bills, to avoid unnecessary disputes. It was alleged that the petitioner was raising unnecessary disputes when asked to show improvements orally as well as in writing and was putting the municipal corporation in a financial loss. The corporation informed the petitioner that if it did not resume the work in two days, it's name will be placed in the blacklist after following the procedure in accordance with law. There is nothing on record to show whether, after this communication dated 24-5-2000 was sent to the petitioner, any proceedings were initiated for placing the petitioner in the blacklist as indicated

in the said communication.

5. The contention of the learned counsel for the respondent corporation that the said communication should be treated as a show cause notice, cannot be accepted, because, the communication only indicated that if the petitioner did not re-start the work within two days, proceedings will be initiated in accordance with law for placing the petitioner in the blacklist. Such a communication cannot be described as a show cause notice calling upon the petitioner as to why it should not be placed in blacklist. In a show cause notice, opportunity is usually given to show cause within the time indicated in the notice and an opportunity may also be given for hearing the petitioner.

5.1 The Supreme Court in Erusian Equipment and Chemicals Ltd. v. State of West Bengal, reported in AIR 1975 SC 266, has held that blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. It held that the disability was created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. In paragraph 20 of the judgement, the Supreme Court held that fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist. In paragraph 21 of the judgement, it was made clear with regard to the case of the petitioners in that case that the authorities will give an opportunity to them to represent their case and the authorities will hear them as to whether their name should be put on the blacklist or not. The decision in Erusian Equipment and Chemicals Ltd. (supra) was followed by this Court in Special Civil Application No.2299 of 1997 in Swastik Construction Co. v. Sardar Patel University decided by the Hon'ble Mr.Justice M.S.Shah on 14-10-1997.

6. In the present case, no such opportunity was given to the petitioner and the communication dated 25-4-2000 can by no process of liberal construction, be treated as such an opportunity. The impugned resolution at Annexure "D" to the petition and the communication at Annexure "E" to the petition of that resolution are violative of principles of natural justice and are, therefore, hereby set aside, leaving it open to the respondent corporation to take appropriate proceedings in accordance with law before taking any action for the purpose of blacklisting the petitioner. Rule is made

absolute accordingly with no order as to costs.

[R.K.ABICHANDANI, J.]

[K.M.MEHTA, J.]
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